

paragraphs (c)(1) and (c)(2) of this section.

(d)(1) Paragraphs (a), (b) and (c) of this section do not apply to communications concerning national defense or foreign policy matters. Such *ex parte* communications to or from an Agency employee on national defense or foreign policy matters, or from employees of the U.S. Government involving intergovernmental negotiations, are allowed if the communicator's position with respect to those matters cannot otherwise be fairly presented for reasons of foreign policy or national defense.

(2) *Ex parte* communications subject to this paragraph will be made a part of the record to the extent that they do not include information classified under an Executive order. Classified information will be included in a classified portion of the record that will be available for review only in accordance with applicable law.

(e) Upon receipt of a communication made, or knowingly caused to be made, by a party in violation of this section the Judge may, to the extent consistent with the interests of justice, national security, the policy of underlying statutes, require the party to show cause why its claim or interest in the adjudication should not be dismissed, denied, disregarded, or otherwise adversely affected by reason of such violation.

(f) The prohibitions of this rule shall apply beginning after issuance of a NOVA, NOPS, NIDP or any other notice and until a final administrative decision is rendered, but in no event shall they begin to apply later than the time at which an administrative proceeding is noticed for hearing unless the person responsible for the communication has knowledge that it will be noticed, in which case the prohibitions shall apply beginning at the time of her/his acquisition of such knowledge.

#### POST-HEARING

#### § 904.260 Recordation of hearing.

(a) All hearings shall be recorded.

(b) The official transcript of testimony taken, together with any exhibits, briefs, or memoranda of law filed therewith, will be filed with the ALJ

Docketing Center. Transcripts of testimony will be available in any hearing and will be supplied to the parties at the cost of the Agency.

(c) The Judge may determine whether "ordinary copy", "daily copy", or other copy (as those terms are defined by contract) will be necessary and required for the proper conduct of the administrative proceeding.

#### § 904.261 Post-hearing briefs.

(a) The parties may file post-hearing briefs that include proposed findings of fact and conclusions of law within 30 days from service of the hearing transcript. Reply briefs may be submitted within 15 days after service of the proposed findings and conclusions to which they respond.

(b) The Judge, in his or her discretion, may establish a different date for filing either initial briefs or reply briefs with the court.

(c) In cases involving few parties, limited issues, and short hearings, the Judge may require or a party may request that any proposed findings and conclusions and reasons in support be presented orally at the close of a hearing. In granting such cases, the Judge will advise the parties in advance of hearing.

#### DECISION

#### § 904.270 Record of decision.

(a) The exclusive record of decision consists of the official transcript of testimony and administrative proceedings; exhibits admitted into evidence; briefs, pleadings, and other documents filed in the administrative proceeding; and descriptions or copies of matters, facts, or documents officially noticed in the administrative proceeding. Any other exhibits and records of any *ex parte* communications will accompany the record of decision.

(b) The Judge will arrange for appropriate storage of the records of any administrative proceeding, which place of storage need not necessarily be located physically within the ALJ Docketing Center.

#### § 904.271 Initial decision.

(a) After expiration of the period provided in § 904.261 for the filing of reply